

REMARKS

Claims 1, 3-22 and 25-46 are pending in this application. Applicant appreciates the Office Action's indication that claims 8, 18, 19, 35 and 39 contain allowable subject matter (the Office Action incorrectly indicates that these claims stand withdrawn).

By this Amendment, claims 1 and 21 are amended. Claim 1 corresponds to claim 2, as originally filed. Claim 21 corresponds to claim 24, as originally filed. No new matter is added. Claims 2, 23 and 24 are canceled without prejudice to, or disclaimer of, the subject matter recited in those claims. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

Entry of the amendments is proper under 37 CFR §1.116 because the amendments: (a) place the application in condition for allowance (for the reasons discussed herein); (b) do not raise any new issue requiring further search and/or consideration as the amendments simply incorporate subject matter from dependent claims into independent claims; and (c) place the application in better form for appeal, should an appeal be necessary. Entry of the amendments is thus respectfully requested.

I. The Rejections of Claims 1-4, 5-7, 9-17, 43 and 44

The Office Action rejects claims 1, 2, 5-7, 9-17, 43 and 44 under 35 U.S.C. §103(a) over DE 3517122 to Schillig in view of U.S. Patent No. 4,272,768 to Rookard Jr. (hereinafter "Rookard"); and rejects claims 3 and 4 under 35 U.S.C. §103(a) over Schillig in view of Rookard, and further in view of U.S. Patent No. 4,306,685 to Coffee. These rejections are respectfully traversed.

Claim 1 recites, among other features, "a substance outlet passage, the passage opening out at one end thereof on either side of said first partition."

The Office Action asserts that Rookard teaches the above-quoted feature, and that it would have been obvious to modify the reservoir of Schillig with the reservoir of Rookard. However, such an analysis fails for the at least following reasons.

Schillig, in Fig. 1, teaches the use of a spiked tube 4 to physically puncture and insert into cup 3. Adding the canister of Rookard, which contains metal baffles 6 at the neck of the canister in Fig. 6, would render Schillig unsatisfactory for its intended purpose because the spiked tube 4 is being inserted into a neck region partially blocked by baffles 6. The Office Action construes Rookard to teach the neck on either side of the metal baffles 6 (i.e., the baffles extend into the neck area). Without substantial redesign, the spike could forcefully contact the baffles in the neck area where the liquid in the cup 3 exits, causing damage to either the closure member 6, cup 3, or the spiked tube 4.

Claim 3 recites, among other features, "wherein the closure member comprises a ball check valve." Claim 4 recites, among other features, "wherein the spray mechanism comprises a portion in relief arranged, when the reservoir is mounted on the device, to move the ball from a first position closing the passage to a second position opening the passage."

The Office Action asserts Coffee for the above-recited features, and that it is obvious to modify Schillig with the features of Coffee. However, such an analysis fails for at least the following reasons.

Schillig, Fig. 2, uses "Radialdichtring" ("seal") 12 to create a seal around the spiked tube 4 by forcing material to be in contact with the spiked tube 4 when inserted into the cup 3. Schillig, in Fig. 2, teaches side entry holes 20 for the liquid in the cup 3 to enter the spiked tube 4 and enter the spray device 1. To replace the seal 12 of Schillig with a ball-valve of Coffee in Fig. 7 at the top of the spiked tube 4 would cause the liquid in the cup 3 not to enter the side entry holes 20, changing the principle of operation of Schillig. Further, such a modification would cause the liquid in the cup to leak down the sides of the spiked tube 4

onto the user's hands and the spray device 1. This leakage clearly would render Schillig unsatisfactory for its intended purpose of working as a spray device 1 with liquid storage in cup 3.

Further, such a modification would cause the delicate valve mechanisms of Coffee to be damaged when forcefully coming into contact with the spiked tube of Schillig, rendering Schillig unsatisfactory for its intended purpose. Schillig would have to be substantially reengineered to replace the spiked tube with the finger 47 of Coffee, which is designed to come into contact with the ball. However, such a finger would not forcefully pierce through the bottom of cup 3. Therefore, this modification would render Schillig unsatisfactory for its intended purpose of piercing into the bottom of the cup 3.

Therefore, one of ordinary skill would not have had any reason to try and combine Schillig with Rookard or with Rookard in view of Coffee. Accordingly, reconsideration and withdrawal of the §103(a) rejections of claims 1, 3-7, 9-17, 43 and 44 are respectfully requested.

II. The Rejection of Claims 20-34, 36-38, 40-42, 45 and 46

The Office Action rejects claim 20 under 35 U.S.C. §103(a) over Shillig in view of U.S. Patent No. 1,603,612 to Krautzberger; rejects claim 20 under 35 U.S.C. §103(a) over Krautzberger in view of Shillig; and rejects claims 21-34, 36-38, 40-42, 45 and 46 under 35 U.S.C. §103(a) over Krautzberger in view of U.S. Patent Application Publication No. 2003/0108487 to Bara. These rejections are respectfully traversed.

Regarding claim 20, the Office Action applies Krautzberger in combination with Schillig in asserting obviousness of this claim. In the alternative, the Office Action newly applies Schillig in combination with Krautzberger in asserting obviousness of this claim. The Office Action concedes that Schillig does not disclose a housing for receiving a vector gas supply. The Office Action relies on Krautzberger as allegedly disclosing these features.

However, Krautzberger only discloses a pipe 6B through which compressed air enters. Pipe 6B is apparently described as "attached on the lower side." As discussed in the May 9, 2008 Amendment, these features cannot reasonably be considered to correspond to a housing for receiving a vector gas supply.

Moreover, the construction of the Office Action does not comport with the ordinary and customary meanings of the claim terms. A "housing for receiving the vector gas supply" is sufficiently clear to be understood, as used in the context of the pending claims, as the housing at least partially containing the vector gas supply (see Applicant's specification at, for example, paras. [0048], [0054], [0069], [0072]; Fig. 2, Ref. No. 11a). As described in Applicant's specification, providing "a housing for receiving the vector gas supply" may contribute to the benefits of making the device portable and cordless (see para. [0048]). When "A is received by B", one of ordinary skill in the art would understand this configuration to mean that A is at least partially contained by B. Therefore, the vector gas supply can be at least partially internal to the housing. The Office Action, at page 10, asserts that Krautzberger is fully capable of receiving a vector gas supply. Pipe 6B of Krautzberger is too small to be a "housing for receiving the vector gas supply." A housing that is too small would not provide enough vector gas for practical use of the device. Therefore, Krautzberger is not fully capable of receiving a vector gas supply.

Regarding claim 21, claim 21 is amended to recite additional features, as outlined above. In particular, claim 21 recites, among other features, "the dispenser valve being secured to the pressurized receptacle and being triggered by tilting a control rod." The Office Action asserts that it would have been obvious to try to combine Bara with Krautzberger for the above-quoted features. One of ordinary skill in the art would not have had any reason to combine Krautzberger and Bara to render obvious the subject matter of claim 21, as amended, and even if in hindsight having done so, would not have achieved the claimed invention.

The embodiment of Figs. 12-15 of Bara comprises a dispenser valve secured to a pressurized receptacle that releases a vector gas as a user actuates pushbutton 1103. This dispenser valve cannot reasonably be considered to have a tilting rod. Specifically, upon actuation, rod 1120 is confined to translating up and down relative to the receptacle 1104. Thus, in this configuration, a tilting of rod 1120 is not possible. Combining this embodiment of Bara with Krautzberger would yield a device that does not operate according to the specific language of the above-quoted feature recited in claim 21.

Alternatively, the embodiment of Figs. 6, 7 and 8 of Bara comprises a dispenser valve secured to a pressurized receptacle that releases a vector gas as a user actuates push button 135. If push button 135 is assumed to correspond to a control rod, it would have been impractical to keep this push button 135 "capable of being operating by a user" and combine it with an adjustment valve. Therefore, it would not have been obvious to combine this embodiment of Bara with Krautzberger or to achieve the claimed combination.

Therefore, if Bara is asserted to teach a tilting rod, such a tilting rod can only be in relation to different embodiments that do not have an adjustment valve. Thus, Krautzberger and Bara would not be operable as combined. For these reasons, a person of ordinary skill in the art at the time of filing this application would not have had any reason to combine Krautzberger with Bara.

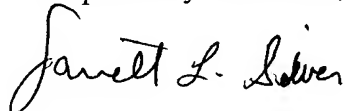
For at least the above reasons, the applied references are not combinable in the manner suggested, and no permissible combination of the applied references can reasonably be considered to have suggested the combinations of features positively recited in claims 20 and 21. Additionally, claims 22 and 25-34, 36-38, 40-42, 45 and 46 would also not have been reasonably rendered obvious by the applied references for at least the respective dependence of these claims, directly or indirectly, on an allowable base claim, as well as for the separately patentable subject matter that each of these claims recites.

Accordingly, reconsideration and withdrawal of the §103(a) rejections of claims 20, 21, 25-34, 36-38, 40-42, 45 and 46 are respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1, 3-22 and 25-46 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



William P. Berridge
Registration No. 30,024

Jarrett L. Silver
Registration No. 60,239

WPB:JZS/jzs

Attachment:

Petition for Extension of Time

Date: January 21, 2009

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>
--